IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2753 OF 2003
IN
SUIT NO.601 OF 2003

Mr.Satish Joshi ....Plaintiff
V/s.
Smt.Lalita M. Joshi & Ors. ....Defendants

Mr.S.A. Sawant for the Plaintiff.
Mr.Bipin Joshi for Defendant No.2.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH NOVEMBER, 2005.

P.C. :

1. The suit is filed for a declaration that the suit property being a building viz.Mahendra Villa, Ghatkopar (West), Mumbai is joint Hindu family property and that the Plaintiff and the Defendants each have a 1/6th share in the suit building. The Notice of Motion seeks appointment of a Receiver and injunction in respect thereof.

2. Original Defendant No.1 is the mother of all the other parties. Defendant No.2 is the daughter of original Defendant No.1 from her first marriage. Rest of the Defendants are the children of Defendant No.1 from her second husband - Mithubhai, who expired in

1981.

3. The only question that falls for consideration is whether the suit property belongs to the joint Hindu family or whether it belongs to Defendant No.1.

4. Prima-facie at least it is established that the property belongs to Defendant No.1 and not to the deceased or to the joint Hindu family.

5. A detail affidavit in reply has been filed on behalf of Defendant No.1. There is no affidavit in rejoinder. The original Defendant No.1 purchased the said property by a duly registered document dated 5.4.1974. The property consists of several tenants including the Plaintiff.

6. All revenue records show the name of original Defendant No.1 as the owner thereof.

7. Defendant No.1 has also relied upon an affidavit/declaration dated 1st November, 1997 executed inter-alia by the Plaintiff and Defendant Nos.3 and 4 agreeing not to object to the development of the suit property by Defendant No.2. The affidavit

also records that original Defendant No.1 nominated, constituted and appointed Defendant No.2 as her attorney to develop the property in terms thereof. What is important to note is that the said document states that the original Defendant No.1 is absolute owner of the suit property.

8. There is considerable dispute as to the genuineness of this document. For the purpose of this order, it is not even necessary to rely upon the same.

9. It is important to note that a registered Deed of Conveyance dated 14th September, 1999 was executed whereby the original Defendant No.1 sold the said property to Defendant No.2 for consideration. In the litigation that ensued between the parties including in the City Civil Court, the original Defendant No.1 confirmed the said conveyance. There cannot be any doubt therefore that the original Defendant No.1 did not dispute the fact of the conveyance. Thus the conveyance has been referred in detail in affidavit in reply. There is no rejoinder thereto. In the circumstances, there is nothing that warrants the Court entertaining any doubt about the same. Recital "A" in the said conveyance refers to the said registered deed dated 5.4.1974 by which the

original Defendant No.1 acquired the said property.

10. Added to this is the fact that the children of the original Defendant No.1 had in fact paid the rent to the original Defendant No.1 in respect of the part of the said property in their possession. This too establishes that the original Defendant No.1 was the owner of the said property.

11. There is nothing on record to indicate that the property was acquired benami in the name of the original Defendant No.1. There is nothing on record to indicate that the original Defendant No.1 did not have the means to acquire the property. In the affidavit in reply, it is specifically averred that the property was acquired by the original Defendant No.1 from her stridhan. The same has not been denied.

12. More important is the fact that there is nothing on record to indicate that the father of the Plaintiff had acquired the said property in any manner. Had there been anything to indicate the same, it would probably be a different matter altogether.

13. In any event the Plaintiff’s rights qua any third party developer are fully protected in as much

the Plaintiff is admittedly a valid subsisting tenant of the original Defendant No.1. That much is admitted by Defendant Nos.1 and 2 themselves. In fact it is their case inter-alia that the Plaintiff is the tenant of the said property. Thus no developer would be entitled to dispossess the Plaintiff without due process of law.

14. In the circumstances, the Notice of Motion is dismissed.